

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

WILLIAM SPIVEY, on behalf of himself and  
all others similarly situated,

Plaintiff,

v.

Evig LLC dba Balance of Nature and Douglas  
L. Howard

Defendants.

Class Action Complaint pursuant to the  
Illinois Consumer Fraud Act: 815 Ill. Comp.  
Stat. 502/1, *et seq.*

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**CLASS ACTION COMPLAINT**

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Plaintiff WILLIAM SPIVEY brings this action on behalf of himself and all others similarly situated against Defendants EVIG LLC DBA BALANCE OF NATURE AND DOUGLAS L. HOWARD, “Defendants”) and alleges upon personal knowledge as to his own acts and experiences and, as to all other matters, upon information and belief:

**FACTUAL ALLEGATIONS**

***BALANCE OF NATURE***

1. Since at least 1997, Defendants have marketed purported fruit and vegetable dietary supplement products – Balance of Nature Fruits and Balance of Nature Vegetables - under the Balance of Nature brand name (hereafter referred to as Balance of Nature).<sup>1</sup>

2. Balance of Nature is sold as a combination package – one bottle of the fruits and one bottle of the vegetables.

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<sup>1</sup> Defendants also sell a fiber and spice product that is not the subject of this lawsuit at this time.

3. A variety of fruits is depicted on the front of the Fruit bottles from oranges to grapefruit, various berries, papaya, pineapple, grapes, bananas, apples and so on.

4. A variety of vegetable is depicted on the front of the Vegetable bottles from carrots, to cabbage, carrots, beets, lettuces, celery, cauliflower and so on.

5. Early on and as late as 2019, Defendants illegally marketed and sold these products for the treatment, cure, mitigation or prevention of various ailments and diseases ranging from the common cold, pneumonia, diabetes, arthritis, lowering cholesterol, MS, asthma, cancer to covid.

6. Because Defendants did not obtain approval of these disease claims through the required new drug approval process (“NDA”), on August 20, 2019, the FDA issued a warning letter to defendants noting that Defendants were marketing their products based upon unapproved and illegal disease claims.

7. The FDA ultimately sued Defendants and recently Defendants entered into a consent decree in which they agreed to, among other things, no longer make diseases claims.

8. While the foregoing is deep background regarding the lengths to which Defendants were willing to stoop to sell Balance of Nature to unsuspecting consumers, this case is not about Defendants’ illegal marketing of their Balance of Nature products as drugs.

9. Rather, in addition to Defendants’ initial illegal marketing of the Balance of Nature Products as drugs, they have also made false and deceptive health and well-being claims about the purported effects of taking Balance of Nature.

10. For example, one of its video advertisements that appears on its website as well as being run as part of a blitz of television ads, features the founder and owner of the Balance of Nature products, Douglas Howard, who looks into the camera and says “Eating Balance of Nature Fruits and Veggies is not replacing the fruits and vegetables in your diet, it is fruits and vegetables

in your diet. Ask yourself, how many servings of fruits and vegetables have I eaten today? Have you eaten 1, 2, 3 and from how many varieties? Most people are less than three. Our body is an amazing chemical laboratory. *And when you give it the right chemistry it functions the best.* Balance of Nature is 31 fruits and vegetables, prepared in a way that gives you *the ultimate whole food fruit and vegetable chemistry*. Let Balance of Nature help you supplement your fruit and vegetable intake *for a lot less money and a lot less work and a much higher quality of life*. See, <https://www.youtube.com/watch?v=-B0cytQ4gI8>.

11. In another ad he claims that Balance of Nature “gives your body the chemistry it needs to help your cells run at their optimum.” See, [https://www.youtube.com/watch?v=bzFKAGw\\_-D0&feature=youtu.be](https://www.youtube.com/watch?v=bzFKAGw_-D0&feature=youtu.be).

12. Virtually every statement he makes in these two videos is either false or is an intentional half-truth that deceives consumers into believing that by buying and taking the recommended daily dose of the Balance of Nature products this will provide the consumer with meaningful nutrition that will help supplement his or her’s diet and fill in any nutritional gaps that may arise from not consuming the daily requirements of fruits and vegetables – that Balance of Nature is the “ultimate whole food fruit and vegetable chemistry” that, “for a lot less money” will provide a “higher quality of life.”

13. This advertisement is one of several that are on Defendants’ web site and that Defendants have been using to blitz the television airways with similar claims.

14. The sum and substance of these ads communicates one unitary message - that by taking Balance of Nature Fruits and Vegetables a consumer will feel more energetic and healthier. See, <https://www.youtube.com/watch?v=BW5BPVEcaao> (Grey haired woman says that Balance of Nature helps her keep an active lifestyle), <https://www.youtube.com/watch?v=-scf3DGA7tM>

(Ruthie – an older woman claims Balance of Nature gives her more energy); <https://www.youtube.com/watch?v=dIz2c9sgWEk> (60 year old physical trainer who feels like she has the energy level of a 27 year old from taking Balance of Nature), [https://www.youtube.com/watch?v=UFkCQyI\\_kXw](https://www.youtube.com/watch?v=UFkCQyI_kXw) (Grey haired grandmother says she wants to stay healthy and claims that taking Balance of Nature makes her feel “great”); <https://www.youtube.com/watch?v=dQkDvrJ2uQY> (Grey haired man says that he always wanted to take up surfing and Balance of Nature helped him do it, that he plans on surfing till he’s 80 and he doesn’t think he could do it without Balance of Nature); <https://www.youtube.com/watch?v=GFH47tuUnok> (76 year old women claims that she always had to take a nap after lunch, she just couldn’t keep her eyes open, until she started taking Balance of Nature – “I want to keep living my life with energy and Balance of Nature helps me do that”)); <https://www.youtube.com/watch?v=qJksR3x4S00> (Husband and wife in their early 40s or so take Balance of Nature because they get more energy from it); <https://www.youtube.com/watch?v=93cBiZtAuPw1> (voice over asserts that thousands of nutrients found naturally in whole fruits and vegetables taking 31 of the highest quality fruit and vegetables in Balance of Nature, freeze-dried and encapsulated so that one can get the fruits and vegetables they need).

15. The foregoing are just a sample of the advertisements that Defendants have on their web site and on TV claiming that taking Balance of Nature will provide one with the energy to become more active and healthier.

16. Yet, as set forth herein, nothing could be further from the truth.

17. Balance of Nature is sold on its website for \$89.95 for a one-time purchase or at a 22% discount of \$69.95 for a one-time member fee of \$24.95 and agreement to receive a shipment every 28 days.

18. And assuming a consumer chooses to subscribe at the discounted rate of \$69.95 and is seeking to add to their intake of nutrients and vitamins from a supplement, as set forth below, a daily dose of Balance of Nature Fruits and Veggies would cost \$2.33 provides ridiculously trivial amounts of one's daily nutritional needs.

19. For instance, a daily dose of Balance of Nature provides a mere 2.747 mg of vitamin C at a cost of \$0.85 per mg.

20. And this, when Recommended Dietary Allowance (RDA) is 90mg for men and 75mg women.

21. By way of comparison, that same consumer could pay \$0.09 for a daily dose of Centrum Silver Multivitamin that provides 100 mg of vitamin C at a cost of less than one cent (\$0.009) per mg.<sup>2</sup>

22. So much for Balance of Nature costing less or, more importantly, filling any gaps in consumers' daily nutritional needs.

23. And if the comparator for the "costs less" is actual fruit or vegetables the numbers are no better as an orange costs approximately \$1 at retail and contains 51mg of vitamin C at a cost of 2-cents per milligram.

24. And as will be seen below, the same math applies to virtually all of the vitamins or nutrients found in a serving of Balance of Nature Fruits and Veggies – not only do they not cost

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<sup>2</sup> The vitamin C in Centrum Silver is the same molecule as the vitamin C in the Balance of Nature products. Moreover, Centrum Silver is chosen as a comparator because, for the most part, Balance of Nature is marketed to those over 50. But the math is just as bad if one uses Centrum Adults as a comparator, as a 200 tablet bottle costs 5 cents per tablet and provides 60mg of vitamin C.

less but the costs of the nutrients per serving in the Balance of Nature products is shockingly excessive.

25. And the labeling of Balance of Nature is no better on its own as it is equally misleading and deceptive.

26. To start, there is one thing that is abundant in the Balance of Nature Products – out of a combined Fruit and Veggies daily 4 g dose of “Blends” – 1.5 g is sugar.<sup>3</sup>

27. So almost 40% of the Balance of Nature products are comprised of sugar or to put it in terms of cost – consumers are paying \$0.93 for 1.5 g of sugar – the single largest component of the Balance of Nature products by multiples of multiples – when sugar at retail costs approximately \$0.02 per pound.<sup>4</sup>

28. So consumers are paying over close to 70 cents per gram for the sugar in Balance of Nature or almost 35 times the retail cost of sugar for what comprises the single largest component in and almost 40% of the Balance of Nature products.

29. The failure to disclose these facts – that consumers are grossly overpaying for a product that is almost 40% sugar is, in itself, a material concealment as it not only conceals the price gouging committed by Defendants, but it is also a material concealment about the fact that almost 40% the Balance of Nature products are predominantly vacant calories provided by sugar.

30. And even then the amount of sugar is so little that it cannot and does not provide any meaningful energy boost even for a fleeting moment.

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<sup>3</sup> The levels of nutrition set forth in this complaint are nowhere to be found in any of the information provided by Defendants either on the products labeling, on its website or in Defendants’ advertising of the Balance of Nature Products.

<sup>4</sup> A four-pound bag of sugar costs \$0.81 per pound at Walmart. <https://www.walmart.com/ip/Great-Value-Pure-Granulated-Sugar-4-lb/10315162>. There are 453.592 grams of sugar in a pound at a cost of approximately 0.00178 cents per gram of sugar – rounded out that’s 2 cent per gram.

31. And just as the ads for Balance of Nature are false deceptive and misleading for those viewing them either on TV or on Defendants' website, those who buy Balance of Nature at brick and mortar stores or on the web such as at Amazon.com based upon the labeling claims, are just as mislead and deceived.

32. On the top front of the Balance of Nature labels is a prominent banner with the following "Real Food – Real Science – Real Nutrition."







33. Each of these claims is misleading and deceptive when read in the context in which they are made.

### DEFENDANTS' LABELING CLAIMS OF "REAL NUTRITION" ARE MISLEADING AND DECEPTIVE

34. The banner headline at the top of each label "real nutrition" is, at a minimum, a half-truth calculated to deceive consumers, as the amount of "real nutrition" in a combined daily



dose of Balance of Nature Fruits and Veggies is so small as to be trivial and meaningless.<sup>5</sup>

35. The “real nutrition” banner on the front of each label imparts a concrete message to the reasonable consumer - that by taking Balance of Nature they will obtain meaningful nutrition that will meaningfully supplement whatever shortfalls they may have in their daily intakes of fruits and vegetables.

36. Again, nothing could be further from the truth.

37. For instance, the RDA fiber is 38 and 25g for men and women 19-50 years of age, and then 30 and 21 grams beyond 50. In accordance to RDAs, the Daily Value is 28 grams, however the daily intake around 15 grams, for an average daily shortfall of 10-13 grams.

38. Yet, Balance of Nature Veggies contains 0.5 grams of fiber and Balance of Nature Fruits contains 0.3 grams of fiber for a combined grand total of 0.8 grams of fiber in the recommended daily dose.

39. Thus, a daily dose of the combined fruit and veggies Balance of Nature products – which costs \$69.95 for a thirty (30) day supply - or \$2.33 per day – supplies less than one gram of fiber – hardly “real nutrition” when the Daily Value is 28 grams and the shortfall on average is 10 grams per day.

40. Moreover, as noted above Defendants market Balance of Nature as helping to fill in the gap between what our daily requirements are and what we eat for a variety of vitamins as well as fiber.

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<sup>5</sup> In the beginning Defendants sold Balance of Nature Fruits and Balance of Nature Veggies, as separate products with the same banners at the top of the labels “Real Food” “Real Science” and “Real Nutrition” only to recently sell the two as a package. Thus, whatever deception committed by the Defendants in connection with the sale of the combined product is that much worse when, for example, the claim “real nutrition” is applied to either the Fruit or Veggie products alone.

41. Providing less than one gram of fiber when our average daily shortfall is 10 grams is hardly “real nutrition” and does not provide any meaningful supplementation to fill in the gap – particularly when one considers that a daily dose of Balance of Nature Fruits and Veggies costs \$2.33 per day.

42. For instance, if one tried to fill the 10 gram gap in meeting their daily requirements of fiber solely from taking Balance of Nature Fruits and Veggies, it would cost them close to \$24 per day.

43. An apple – which on average costs \$1.00 - provides 4.4 grams of fiber but to gain that amount of fiber from Balance of Nature would cost almost ten times more at a little more than 10 dollars..

44. Or if one wants to go the route of a supplement, by way of comparison, one dose of a Metamucil fiber gummies contains 5 grams of fiber per serving at a cost of 21 cents per day – while the same amount of fiber from Balance of Nature would cost \$14.02 per day – or 67 times more than what a simple 5 gram fiber gummy would cost. See, [https://www.amazon.com/Metamucil-Supplement-Gummies-Orange-Prebiotic/dp/B0BDP24LP4/ref=asc\\_df\\_B0BDP24LP4/?tag=hyprod-20&linkCode=df0&hvadid=666700525438&hvpos=&hvnetw=g&hvrnd=7730559578569847229&hvpon=&hvptwo=&hvqmt=&hvdev=c&hvdvcmdl=&hvlocint=&hvlocphy=9017352&hvta rgid=pla-1947072558631&psc=1&mcid=14cbbd3b144439ba8b950d9622abee76](https://www.amazon.com/Metamucil-Supplement-Gummies-Orange-Prebiotic/dp/B0BDP24LP4/ref=asc_df_B0BDP24LP4/?tag=hyprod-20&linkCode=df0&hvadid=666700525438&hvpos=&hvnetw=g&hvrnd=7730559578569847229&hvpon=&hvptwo=&hvqmt=&hvdev=c&hvdvcmdl=&hvlocint=&hvlocphy=9017352&hvta rgid=pla-1947072558631&psc=1&mcid=14cbbd3b144439ba8b950d9622abee76).

45. And the same is true for the other vitamins and nutrients found in the Balance of Nature Fruit and Veggie products.

46. For instance, Balance of Nature Fruits provides 1.88 mg of vitamin C and Balance of Nature Veggies provides 0.867 mg of vitamin C for a combined total of 2.747 mg of vitamin

from a daily dose that costs \$2.33.

47. The RDA for vitamin C for women is 75 mg and 90 mg for men and the Daily Value is 90mg.

48. Thus, if the objective is to fill in the gap between consumers' intake and daily requirement, an additional 2.747 mg of vitamin C does not and cannot constitute as providing a meaningful contribution and thus with regard to vitamin C, the combined daily dose of Balance of Nature Fruit and Veggies does not constitute "real nutrition" from a reasonable consumer's viewpoint.

49. For example, a \$2.33 daily dose of combined fruits and veggies provides a mere 4.6% of the daily requirement standards for vitamin C when for \$.09 per day a Centrum Silver 50+ provides 67% of the daily requirement and to get the same amount of vitamin C from the Balance of Nature product would cost upwards of \$36.00.

50. And the same is true for all of the key vitamins as a \$2.33 daily dose of the Balance of Nature products provide 0.4% of the daily requirement of vitamin B2 and 0.2% vitamin B3 whereas a Centrum Silver provides 131% of the daily requirement of B2 and 125% of the vitamin B3.

51. In sum, a daily dose of the Balance of Nature products provides minimal to trivial amounts of key nutrients all at an exorbitant cost:

Vitamin C – 4.6% of the daily requirement (Centrum Silver provides 67%)

Potassium – 1.7% of the daily requirement (Centrum Silver – 2%)

Calcium – 1.6% of the daily requirement (Centrum Silver – 17%)

Vitamin B 2 – 0.4% (Centrum Silver 131%)

Vitamin B 3- 0.2% (Centrum Silver 125%)

Folate – 2.2% (Centrum Silver 167%)

Vitamin A – 9.7% (Centrum Silver 83%)

Vitamin E – 1.1% (Centrum Silver 150%)

Vitamin K – 20.5% (Centrum Silver 25%)

52. Reasonable consumers would expect that a product claiming that it provides “real nutrition” and that costs \$2.33 per day would provide nutrition that would meaningfully contribute to their overall health and well-being and nothing could be further from the truth.

53. And what’s worse, is that, as noted below, the nutritional values set forth above regarding Balance of Nature are concealed from consumers – as nowhere on the labeling or in Defendants’ website are the actual nutritional values imparted to the consumer. Instead, on the back of the labels Defendants tell consumers on the Balance of Nature Fruits consumers are told that each product contains three blends each containing an amorphous combination of fruits or vegetables that Defendants call (1) a maintain blend (2) a fend blend and (3) a refresh blend

#### **REAL FOOD – MISLEADING AND DECEPTIVE**

54. Since the Balance of Nature products are purported to be freeze-dried and pulverized versions of various fruits and vegetables, the claim that they are “real food” is literally true but is nevertheless false and misleading in the context in which it is made.

55. As, in the context in which the “real food” claim is made- e.g. in the context of the Balance of Nature Products providing “real nutrition” – reasonable consumers are lead to believe that taking Balance of Nature is at least in some part a substitute for eating real food such as a serving of fruits or vegetables.

56. One needs only to look at the ad in which Defendant Dr. Howard pitches Balance of Nature in the context of our falling short of consuming the 5 servings of fruits and vegetables

per day to understand what is meant by Defendants when they say “real food” on the labeling - that Balance of Nature can at least provide the same amount of “real food” as a serving of either fruits or a serving of vegetable.

57. But, again, noting could be further from the truth.

58. While a daily dose of Balance of Nature combined Fruits and Veggies contains less than 3 mg of vitamin C, an orange has 59 mg of vitamin C (<https://fdc.nal.usda.gov/fdc-app.html#/food-details/746771/nutrients>) and even a banana has close to 9 mg of vitamin C and 358 mg of potassium (<https://fdc.nal.usda.gov/fdc-app.html#/food-details/173944/nutrients> when Balance of Nature combined Fruits and Veggies provides less than 60 mg.

59. Likewise, one tomato provides 13.7 mg of vitamin C and 237 mg of potassium (<https://fdc.nal.usda.gov/fdc-app.html#/food-details/1103276/nutrients>) and one potato provides 19.7 mg of vitamin C and 425 mg of potassium (<https://fdc.nal.usda.gov/fdc-app.html#/food-details/170026/nutrients>).

60. In short, a daily dose of Balance of Nature Fruit and Veggie falls far short of providing any meaningful nutrition in comparison to what is provided by real food.

61. As a result, the labeling claim “real food” is false and misleading in the context in which it is made.

### **REAL SCIENCE – FALSE AND MISLEADING**

62. Likewise, the phrase “real science” is at a minimum, a half-truth calculated to deceive, if not being outright false, as it implies that there is real science – usually understood by the reasonable consumer to be what scientists require - peer-reviewed clinical studies - showing that taking Balance of Nature fruits and veggies on a daily basis provides the represented health benefits.

63. Plaintiffs have conducted a search of PUBMED for any reported clinical trials on the Balance of Nature Products and have found none.

64. Defendants used to cite on their web site to a few unpublished studies conducted at Pavlov Medical University in St. Petersburg, Russia – where Dr. Howard claims to have received a medical degree, but these clinical trials, are not peer-reviewed and most important concern the effects of Balance of Nature on diseases - cancer and cirrhosis.

65. But given that Defendants have agreed to withdraw any and all references to Balance of Nature and its effects on diseases, clearly these two studies cannot be the “real science” to which the labeling refers.

66. One other study on lactation in rats was also once cited on Defendants web site, but clearly, whatever this study may or may not show, it has nothing to do with the representations discussed above regarding Balance of Nature as a dietary supplement.

67. As such, Defendants’ “real science” statement on the front of its Balance of Nature products is false and misleading as there is no science whatever regarding Balance of Nature and the advertising claims Defendants make about their Balance of Nature products.

**THE CLAIMS MADE THE BACK OF THE LABELS ARE FALSE  
AND MISLEADING AS WELL AND SERVE TO REINFORCE THOSE MADE ON THE  
FRONT OF THE LABELS**

68. The back labeling of Balance of Nature Fruits and Vegetables furthers Defendants’ frauds.

69. On the back of the label, where consumers expect to see nutrition information, no meaningful information of the nutritional value of Balance of Nature is provided.

70. In fact, what is on the back of the labels further conceals what Defendants know – that Balance of Nature has no meaningful nutritional value.



71. Thus, on the back of the veggies bottle Defendants state that there is 720mg of what the Defendants call a “Maintain Blend” comprised of “Broccoli (whole head), spinach (leaf), soybean (seed), green cabbage (head), wheatgrass (leaves), kale (leaf), cauliflower (whole head), celery (stalk), white onion (bulb) zucchini (fruit)”.

72. By calling the combination of freeze-dried/pulverized vegetables the “maintain blend”, defendants falsely impart the message that taking Balance of Nature will maintain something presumably with regard to one’s health or well-being, when, set forth above there is no possible meaningful nutrition provided by the products.

73. But that is not all, as on the back of the label of Balance of Nature veggies defendants state that there is also 713 mg of what they call a “Protect Blend” or “Fend Blend”<sup>6</sup> comprised of “garlic (clove), red cabbage (head), red onion (bulb), soybean (seed),<sup>7</sup> carrot (root), kale (leaf), cayenne pepper (fruit and seeds), shitake mushroom (whole) wheatgrass (leaves) sweet potato (tuber).

74. By calling the combination of freeze-dried/pulverized vegetables the “protect blend”, defendants falsely impart the message that taking Balance of Nature will provide some sort of protection for one’s health, when, as seen above, there is so little nutrients in the veggie blend that taking it is meaningless.

75. And finally, on the back of the Balance of Nature veggies Defendants represent that it contains 576mg of yet another blend which they call “Repair Blend” and it purportedly contains “carrot (root), kale (leaf), green onion (scape), soybean (seed), spinach (leaf), cauliflower (whole head), celery (stalk), zucchini (fruit).

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<sup>6</sup> A recently purchased bottle of Balance of Nature has a “Protect Blend” on its back label whereas on the current Balance of Nature web site the same combination of fruits is called a “Fend Blend.”

<sup>7</sup> Inasmuch that the Maintain Blend contains this very same soybean (seed) a does the Protect Blend, this soybean seed apparently does double duty.

76. And the Balance of Nature Fruits product is no different as, per defendants, it too has three blends “maintain (731 mg), protect/fend (719 mg) and repair (561 mg)” but each containing entirely different ingredients in their respective “maintain” “protect/Fend” and “repair” blends than those on the back of the Vegetable label.<sup>8</sup>

77. By representing that the Balance of Nature veggie and fruit products contain blends called “maintain”, “protect” and “repair” Defendants are falsely or deceptively representing that the Balance of Nature products maintain, protects/fend and repair one’s health when it is not possible for these products to do anything at all other than lighten the pocketbooks of consumers.

78. Moreover, consumers are further misled that there is the “real science” behind these “maintain, protect and repair” representations made about the 6 different blends.

79. Plaintiff brings this action on behalf of himself and other similarly situated consumers who purchased the Balance of Nature products, to obtain redress for those who have purchased these products from three years prior to the filing of this action until the date that the class in this matter is certified. Accordingly, Plaintiff seeks compensatory damages and any equitable remedies for himself and members of the Proposed Class.

### **JURISDICTION AND VENUE**

80. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and is a class action in which there are in excess of 100 class members and some members of the Class are citizens of a state different from Defendants.

81. This Court has personal jurisdiction over Defendants because the corporate Defendants are authorized to conduct and do business in Illinois, including this District. And it

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<sup>8</sup> Oddly, even though aloe vera leaf is a vegetable it is included in all three of the fruit blends described above yet is nowhere to be found on the back labels of the vegetable product.

was the individual Defendants who caused the Balance of Nature products to be marketed, promoted, distributed, and sold in Illinois. For instance, Dr. Howard has allowed nationwide broadcasts of advertisements in which he is the spokesperson for the Balance of Nature products to be broadcast in Illinois and elsewhere around the nation. As a result, Defendants have sufficient minimum contacts with this State and/or sufficiently availed themselves of the markets in this State through its promotion, sales, distribution and marketing within this State, including this District, to render the exercise of jurisdiction by this Court permissible.

82. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b) because a substantial part of the events giving rise to Plaintiff's claims occurred while he resided in this judicial district. Venue is also proper under 18 U.S.C. §1965(a) because Defendant transacts substantial business in this District.

### **PARTIES**

83. During the relevant time period (e.g. no more than three years prior to the filing of this lawsuit), Plaintiff William Spivey resided within this district in Yorkville, Illinois. During the relevant time period, after having seen Balance of Nature advertised on television and on Defendants' web site, Plaintiff Spivey subscribed to the purchase of the Balance of Nature products from Defendants online and paid for the products by credit card during a four-month period in the spring of 2021. He did so in reliance upon the belief that paying for and taking Balance of Nature would provide him real and meaningful nutrition that would improve his energy, health and well-being as well as that the claims made by Defendants were backed up with reliable and valid scientific research. Prior to ordering his Balance of Nature products Plaintiff Spivey viewed various videos and advertising claims made on the website that led him to believe that paying for and taking Balance of Nature would improve his energy levels as well as his general well-being.

Plaintiff had also seen and was exposed to television ads about the Balance of Nature products prior to going to the website. He paid \$69.95 -\$89.95, purchasing a monthly supply for four months. He discontinued his purchasing of Defendants' Balance of Nature Products when he realized that the products did not increase his energy levels, improve his quality of life, health and well-being or any other perceptible benefit such as those claimed by Defendants, because the Balance of Nature products Plaintiff Spivey purchased did not and could not provide such benefits. As a result, Plaintiff Spivey suffered injury in fact and lost money. Had Plaintiff known the truth about Defendants' misrepresentations, he would not have purchased the Balance of Nature products.

84. Defendant Evig is a limited liability company incorporated in Nevada and in Utah as a foreign limited liability company with its principal place of business at 1568 S River Rd., St.200, St. George, UT 84790 ("Defendants' Establishment"), within the jurisdiction of this Court. Defendant Evig, an own-label distributor, sells and promotes three products labeled as dietary supplements under the brand name Balance of Nature: (1) Whole Produce Fruits, capsules, and (2) Whole Produce Veggies, capsules. These products are manufactured by Premium Production, LLC using freeze dried fruits and vegetables in powder form.

85. Defendant Douglas Lex Howard is the CEO/Manager of Evig. Mr. "Lex" Howard is the sole owner of the company and most responsible individual at the firm. He is responsible product formulation of as well as all of the misrepresentations, falsehoods and deceptions alleged herein.

#### **CLASS DEFINITION AND ALLEGATIONS**

86. Plaintiff brings this action on behalf of himself and all other similarly situated Class members pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure and

seeks certification of the following Class against Defendants for violations of Illinois state law and/or similar laws in other states:

**Nationwide Class Action**

All consumers in the United States in Illinois and all other states with similar laws from three years prior to the date of the filing of this action until the date notice is disseminated in this matter.

Excluded from this Class are Defendants and the officers, directors and employees of any related entity and who purchased Balance of Nature Products;

**Multi-State Class Action**

All consumers who since three years prior to the filing of this action who purchased Balance of Nature in Illinois and states with similar laws until the date notice is disseminated.<sup>9</sup>

Excluded from this Class are Defendants and the officers, directors and employees of any related entity and those who purchased Prevagen for the purpose of resale.

87. Alternatively, Plaintiff brings this action on behalf of himself and all other similarly situated Illinois consumers pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class:

**Illinois-Only Class Action**

All Illinois consumers who since three years prior to the date of the filing of this action purchased Balance of Nature until the date notice is disseminated.

Excluded from this Class are Defendants and the officers, directors and employees of any related entity and those who purchased Balance of Nature for the purpose of resale.

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<sup>9</sup> While discovery may alter the following, Plaintiff preliminarily alleges that Defendant violated the laws prohibiting unfair and deceptive trade practices of the states and territories wherein Class members reside, including: Cal. Bus. & Prof. Code §17200 *et seq.*; California Civil Code §1750 *et seq.*; Fla. Stat. §501.201 *et seq.*; 815 Ill. Comp. Stat. 502/1, *et seq.*; Mass. Gen. Laws ch. 93A; Mich. Stat. §445.901 *et seq.*; Minn. Stat. §8.31 *et seq.*; Missouri Stat. §407.010 *et seq.*; N.J. Stat. §56:8-1 *et seq.*; N.Y. Gen. Bus. Law § 349; and Wash. Rev. Code. §19.86.010 *et seq.*

88. **Numerosity.** The members of the Class are so numerous that joinder of all members of the Class is impracticable. Plaintiff is informed and believes that the proposed Class contains thousands of purchasers of Balance of Nature who have been damaged by Defendant's conduct as alleged herein. The precise number of Class members is unknown to Plaintiff.

89. **Existence and Predominance of Common Questions of Law and Fact.** This action involves common questions of law and fact, which predominate over any questions affecting individual Class members. These common legal and factual questions include, but are not limited to, the following:

- (a) whether Defendants' representations discussed above are misleading, or objectively reasonably likely to deceive;
- (b) whether the alleged conduct constitutes violations of the laws asserted;
- (c) whether Defendants engaged in false or misleading advertising;
- (d) whether Plaintiffs and Class members have sustained monetary loss and the proper measure of that loss; and
- (e) whether Plaintiff and Class members are entitled to other appropriate remedies, including corrective advertising and injunctive relief.

90. **Typicality.** Plaintiff's claims are typical of the claims of the members of the Class because, *inter alia*, all Class members were injured through the uniform misconduct described above and were subject to Defendants' deceptive false and misleading representations as set forth above. Plaintiff is also advancing the same claims and legal theories on behalf of himself and all members of the Class.

91. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained counsel experienced in complex consumer class action litigation, and Plaintiffs intend to prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.



92. ***Superiority.*** A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against Defendants. It would thus be virtually impossible for members of the Class, on an individual basis, to obtain effective redress for the wrongs done to them. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

93. Unless a Class is certified, Defendants will retain monies received as a result of their conduct that was taken from Plaintiff and Class members.

**COUNT I**  
**Violation of Illinois Consumer Fraud Act (815 Ill. Comp. Stat. 502/1, *et seq.*)**

94. Plaintiff and Class members reallege and incorporate by reference each allegation set forth above and further allege as follows.

95. Plaintiff brings his claims individually and on behalf of the Class.

96. As alleged herein, Plaintiff has suffered injury in fact and lost money or property as a result of Defendants' conduct because he purchased Balance of Nature in reliance on Defendants' misrepresentations, deceptions and falsehoods alleged herein but did not receive a Product as represented.

97. The Illinois Consumer Fraud Act (815 Ill. Comp. Stat. 502/1, *et seq.*) and similar laws in other states, prohibits any “unlawful,” “fraudulent” or “unfair” business act or practice and any false or misleading advertising.

98. Defendants misrepresented on each and every Product package, their web site and TV commercials, the misrepresentations, falsehoods and deceptions alleged herein.

99. Plaintiff and other members of the Class have in fact been deceived as a result of their exposure to and reliance on Defendant’s material representations, which are described above. This has caused harm to Plaintiff and other members of the Class who each purchased the Balance of Nature Fruit and Vegetable products. Plaintiff and the other Class members have suffered injury in fact and lost money as a result of these unlawful, unfair, and fraudulent practices.

100. As a result of its deception, Defendants have been able to reap unjust revenue and profit.

101. Plaintiff, on behalf of himself, all others similarly situated, and the general public, seeks restitution of all money obtained from Plaintiff and the members of the Class collected as a result of Defendants’ consumer frauds.

#### **PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for a judgment:

- A. Certifying the Class as requested herein;
- B. An award of Plaintiff’s and the class’s damages; or
- C. Awarding restitution and disgorgement of Defendant’s revenues to Plaintiff and the proposed Class members as unjust enrichment;
- D. Awarding attorneys’ fees and costs; and
- E. Providing such further relief as may be just and proper.

Dated: January 30, 2024

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